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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE COLLEGE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919-CW

**JOINT ADMINISTRATIVE OMNIBUS
MOTION TO SEAL**

Trial Date: 2025-01-27
Judge: Hon. Claudia Wilken

Pursuant to Civil Local Rules 7-11 and 79-5, and the Stipulation and Order as Modified Modifying Sealing Procedures Relating to Class Certification Briefing and Related Documents (“Stipulation and Order Modifying Sealing Procedures”) (ECF No. 205), Plaintiffs in the above-captioned action and Defendants National Collegiate Athletic Association, Atlantic Coast Conference, The Big Ten Conference, Inc., the Big 12 Conference, Inc., Pac-12 Conference, and Southeastern Conference (collectively, “Defendants,” and together with Plaintiffs, the “Parties”), by and through their respective undersigned counsel, submit this omnibus motion to seal certain portions of the Parties’ class certification briefing, *Daubert* briefing, and supporting documents.

LEGAL STANDARD

The public’s “general right to inspect and copy public records and documents” is “not absolute,” and “courts have refused to permit their files to serve . . . as sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597–98 (1978) (citations omitted). A party may seek to avoid disclosure of confidential, proprietary, or otherwise protected documents by moving to file those documents under seal. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). A party seeking to avoid disclosure must demonstrate “compelling reasons” to seal documents or information related to a motion where the motion is “more than tangentially related to the merits of the case.” *Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF, 2020 WL 6391210, at *2 (N.D. Cal. Mar. 24, 2020). Courts in this district generally regard motions for class certification as “more than tangentially related to the merits of the case” and, therefore, subject to the “compelling reasons” standard. *See, e.g., IntegrityMessageBoards.com v. Facebook, Inc.*, No. 18-cv-05286-PJH, 2021 WL 3771785, at *21 (N.D. Cal. Aug. 24, 2021). Under the “compelling reasons” standard, materials at issue may be sealed so long as the designating party can “articulate compelling reasons supported by specific factual findings” for the need to seal a document. *Opperman v. Path*, No. 13-cv-00453, 2017 WL 1036652, at *1 (N.D. Cal. Mar. 17, 2017) (*quoting Kamakana*, 447 F.3d at 1178–79).

A “compelling reason” to seal exists when not sealing the material would result in the release of trade secrets, *Kamakana*, 447 F.3d at 1179, or of “business information that might harm a litigant’s competitive standing,” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016),

cert. denied sub nom. *FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016) (quoting *Nixon*, 435 U.S. at 599). Courts in this District have found that “compelling reasons” exist to seal confidential business information in the form of “license agreements, financial terms, details of confidential licensing negotiations, and business strategies.” *Guzman v. Chipotle Mexican Grill, Inc.*, No. 17-cv-02606-HSG, 2020 WL 1171112, *1 (N.D. Cal. Mar. 11, 2020) (citation and quotations omitted), as well as documents that reveal a company’s “sales growth and decline,” such as financial data, *Murphy v. Kavo Am. Corp.*, No. 4:11-CV-0410-YGR, 2012 WL 1497489, *2 (N.D. Cal. Apr. 27, 2012).

APPLICATION

The Parties have compiled a narrowly tailored list of materials referenced in the Parties’ class certification briefing and related documents that were provisionally sealed pursuant to the Stipulation and Order Modifying Sealing Procedures, attached hereto as Exhibit 1. For each document or portion thereof included in Exhibit 1, the Parties have identified (i) the designating Party and/or non-party whose confidential information is included in the provisionally-sealed materials, and (ii) the confidentiality designations—as identified in the stipulations and protective orders in this case (*see* ECF Nos. 136–37, 147–48, 180–81)—that were applied when the materials were produced either in this case or in *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litigation* (Case Nos. 4:14-md-2541-CW, 4:14-cv-2758-CW).

Pursuant to the Stipulation and Order Modifying Sealing Procedures and Civil Local Rule 79-5(f)(2), the Parties will, concurrent with this Administrative Motion, serve a copy of this Omnibus Sealing Motion on all non-party designating parties and inform those parties of the procedures set forth in Local Rule 79-5(f)(3), as modified by the Stipulation and Order Modifying Sealing Procedures. *See* ECF No. 205. No later than fourteen days from the filing of this motion, on September 29, 2023, the Parties—and any non-party designating parties that seek to keep their materials under seal—will file statements or declarations in support of sealing explaining: (i) the legitimate private or public interests that warrant sealing; (ii) the injury that will result if sealing is denied; and (iii) why a less restrictive alternative to sealing is not sufficient. *See id.*; Civ. L.R. 79-5(c)(1), (f)(3).

Dated: September 15, 2023

Respectfully Submitted,

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SIGNATURE CERTIFICATION

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Dated: September 15, 2023

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